

## **REMARKS**

In the April 28, 2009 Office Action, claims 1-4, 6, 7-10 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasche et al. in view of Lang et al.

Applicants note with appreciation the telephone interview courteously afforded the undersigned representative of the Applicants on July 15, 2009. The following summarizes the discussion in the telephone interview.

Applicants submit that the Rasche et al. reference provides no disclosure regarding the problem or task of checking whether a positional change of an implant has occurred using x-ray exposures, and therefore the Rasche et al. reference does not provide any teaching or guidance to solve such a problem. The Lang reference discloses a number of different methods and algorithms for analyzing x-ray images, particularly dental images. All of the algorithms and methods disclosed in the Lang et al. reference are for the purpose of allowing accurate and reliable evaluation of bone mineral content and bone structure, as explained in the Lang et al. abstract.

Applicants submit that the passages in the Lang et al. reference provide no more than general information related to various factors associated with x-ray image evaluation. The passage cited by the Examiner at column 8, line 49 through column 12, line 33 pertains only to the use of calibration phantoms. Data analysis and manipulation are generally described at column 13, line 19 through column 18, line 11. The use of anatomical landmarks is generally described at column 18, line 13 through column 20, line 5, and diagnosis and prediction decision trees are generally discussed at column 27, line 46 through column 31, line 24. Throughout these relatively long passages, the Examiner has not identified any specific language that

the Examiner considers to correspond to the individual features of independent claims 1 and 7 of the present application.

In the absence of any specific citation from the Lang et al. reference that could actually be used in the Rasche et al. system, Applicants submit that even the teachings of Lang et al. were applied to the method or system disclosed in the Rasche et al. reference, despite any rationale for doing so, this would merely result in the general techniques disclosed in the Lang et al. reference being used as the basis for comparing the simulated image with the real image in the Rasche et al. reference. Such a comparison is simply not capable of determining whether a medical implant has moved between two chronologically separated points in time. The most that could be ascertained using the general teachings disclosed in the Lang et al. reference would be to determine whether the surgical implant in the Rasche et al. reference is positioned in the optimal (intended) position represented by the simulation image. Once the surgical implant is implanted in this position, however, neither Rasche et al. nor Lang et al. provide any information regarding further steps

that could be taken after the implantation has occurred and the implant is in (it is assumed) its intended position.

In response to these arguments in the telephone interview, the Examiner stated that in his opinion, at least claim 1 did not preclude the possibility of the determination as to whether a positional change has occurred or not occurred being made by human comparison of side-by-side images. It was agreed in the telephone interview that if the independent claims were amended to make clear that the determination of whether a positional change has occurred takes place in a processor, and to also make clear that the processor emits, as an output, an indication that identifies only whether a positional change has occurred or not occurred, this would preclude the Examiner from continuing to maintain the current rejections. The Examiner stated, however, that making such changes would require the Examiner to conduct further searching, and therefore such an Amendment could not entered at this stage of prosecution, after the Final Rejection, and would require the filing of an RCE to permit entry and consideration of the Amendment.

Accordingly, the present Amendment is accompanied by the filing of an RCE.

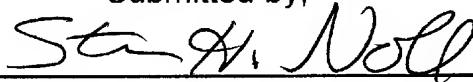
In addition to the aforementioned rejection that was specifically discussed in the telephone interview, claims 5 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasche et al. in view of Lang et al., further in view of Allen. Applicants submit that the above arguments concerning the Rasche et al./ Lang et al. rejection are applicable to this rejection as well. For those reasons, even if that combination of references were further modified in accordance with the teachings of Allen, the subject matter of claims 5 and 11 still would not result.

All claims of the application are therefore submitted to be in condition for allowance.

An editorial change has been made in the Abstract, to delete an internal document reference number contained therein.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,



(Reg. 28,982)

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